

1                                   **UNITED STATES DISTRICT COURT**  
2                                   **DISTRICT OF NEVADA**

3 MONTENEQUE NAKIA KNOX,

Case No.: 3:17-cv-00535-MMD -WGC

4           Plaintiff,

**Order**

5 v.

6 C. SHARP, *et al.*,

7           Defendants.  
8

9           On February 11, 2019, Defendants filed a Motion to Dismiss that attaches Plaintiff's  
10 medical records as exhibits, which include psychiatric records. (ECF Nos. 41, 41-1 to 41-5.)  
11 Defendants did not seek leave to seal the exhibits, and instead they were filed into the public  
12 record. The court sua sponte orders the exhibits (ECF Nos. 41-1 to 41-5) sealed.

13           "Historically, courts have recognized a general right to inspect and copy public records and  
14 documents, including judicial records and documents." *Kamakana v. City and County of Honolulu*,  
15 447 F.3d 1172, 1178 (9th Cir. 2006) (internal quotation marks and citation omitted). "Throughout  
16 our history, the open courtroom has been a fundamental feature of the American judicial system.  
17 Basic principles have emerged to guide judicial discretion respecting public access to judicial  
18 proceedings. These principles apply as well to the determination of whether to permit access to  
19 information contained in court documents because court records often provide important,  
20 sometimes the only, bases or explanations for a court's decision." *Oliner v. Kontrabecki*, 745 F.3d  
21 1024, 1025 (9th Cir. 2014) (quoting *Brown & Williamson Tobacco Corp. v. F.T.C.*, 710 F.2d 1165,  
22 1177 (6th Cir. 1983)).  
23

1 Documents that have been traditionally kept secret, including grand jury transcripts and  
2 warrant materials in a pre-indictment investigation, come within an exception to the general right  
3 of public access. *See Kamakana*, 447 F.3d at 1178. Otherwise, "a strong presumption in favor of  
4 access is the starting point." *Id.* (internal quotation marks and citation omitted). "The presumption  
5 of access is 'based on the need for federal courts, although independent—indeed, particularly  
6 because they are independent—to have a measure of accountability and for the public to have  
7 confidence in the administration of justice.'" *Center for Auto Safety v. Chrysler Group, LLC*, 809  
8 F.3d 1092, 1096 (9th Cir. 2016), *cert. denied*, 137 S.Ct. 38 (Oct. 3, 2016) (quoting *United States*  
9 *v. Amodeo (Amodeo II)*, 71 F.3d 1044, 1048 (2nd Cir. 1995); *Valley Broad Co. v. U.S. Dist. Ct.*,  
10 *D. Nev.*, 798 F.2d 1289, 1294 (9th Cir. 1986)).

11 There are two possible standards a party must address when it seeks to file a document  
12 under seal: the compelling reasons standard or the good cause standard. *Center for Auto Safety*,  
13 809 F.3d at 1096-97. Under the compelling reasons standard, "a court may seal records only when  
14 it finds 'a compelling reason and articulate[s] the factual basis for its ruling, without relying on  
15 hypothesis or conjecture.'" *Id.* (quoting *Kamakana*, 447 F.3d at 1179). The court must  
16 "'conscientiously balance[ ] the competing interests of the public and the party who seeks to keep  
17 certain judicial records secret.'" *Id.* "What constitutes a 'compelling reason' is 'best left to the sound  
18 discretion of the trial court.'" *Id.* (quoting *Nixon v. Warner Comm., Inc.*, 435 U.S. 589, 599 (1978)).  
19 "Examples include when a court record might be used to 'gratify private spite or promote public  
20 scandal,' to circulate 'libelous' statements, or 'as sources of business information that might harm  
21 a litigant's competitive standing.'" *Id.*

22 The good cause standard, on the other hand, is the exception to public access that has been  
23 typically applied to "sealed materials attached to a discovery motion unrelated to the merits of the

1 case." *Id.* (citation omitted). "The 'good cause language comes from Rule 26(c)(1), which governs  
2 the issuance of protective orders in the discovery process: The court may, for good cause, issue an  
3 order to protect a party or person from annoyance, embarrassment, oppression, or undue burden  
4 or expense.'" *Id.*

5       The Ninth Circuit has clarified that the key in determining which standard to apply is  
6 whether the documents proposed for sealing accompany a motion that is "more than tangentially  
7 related to the merits of a case." *Center for Auto Safety*, 809 F.3d at 1101. If that is the case, the  
8 compelling reasons standard is applied. If not, the good cause standard is applied.

9       Here, the exhibits accompany a motion to dismiss which argues that Plaintiff's case should  
10 be dismissed because he has mental health issues, which is not what his claims are centered on. In  
11 any event, under either the good cause or compelling reasons standard, these records should be  
12 sealed.

13       This court, and others within the Ninth Circuit, have recognized that the need to protect  
14 medical privacy qualifies as a "compelling reason" for sealing records. *See, e.g., San Ramon*  
15 *Regional Med. Ctr., Inc. v. Principal Life Ins. Co.*, 2011 WL89931, at \*n.1 (N.D. Cal. Jan. 10,  
16 2011); *Abbey v. Hawaii Employers Mut. Ins. Co.*, 2010 WL4715793, at \* 1-2 (D. HI. Nov. 15,  
17 2010); *G. v. Hawaii*, 2010 WL 267483, at \*1-2 (D.HI. June 25, 2010); *Wilkins v. Ahern*, 2010  
18 WL3755654 (N.D. Cal. Sept. 24, 2010); *Lombardi v. TriWest Healthcare Alliance Corp.*, 2009  
19 WL 1212170, at \* 1 (D.Ariz. May 4, 2009). This is because a person's medical records contain  
20 sensitive and private information about their health.

21       Here, Plaintiff has not made a medical care claim and so has not put aspects of his medical  
22 condition at issue; therefore, these records need be unnecessarily broadcast to the public. (Even if  
23 he had put his medical condition at issue, that does not mean that the entirety of his medical records

1 filed in connection with a motion should be made public). In other words, the plaintiff's interest  
2 in keeping his sensitive health information confidential outweighs the public's need for direct  
3 access to the medical records.

4 Here, the referenced exhibits contain Plaintiff's sensitive health information, including  
5 psychiatric records. Balancing the need for the public's access to information regarding Plaintiff's  
6 medical history, treatment, and condition against the need to maintain the confidentiality of  
7 Plaintiff's medical records weighs in favor of sealing these exhibits. Therefore, the exhibits to  
8 Defendants' motion (ECF Nos. 41-1 to 41-5) will be **SEALED**.

9 **IT IS SO ORDERED.**

10 DATED: March 18, 2019.

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William G. Cobb  
13 United States Magistrate Judge  
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